Crl.Misc.A.No.236-MA OF 2006

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.A.No.236-MA OF 2006

Date of Decision: 04-08-2006

State of Haryana

.....Appellant

VERSUS

1.Satish Kumar son of Amar Singh, Caste Jat, resident of Parnala District Jhajjar,
2.Dilbag Singh son of Randhir Singh, Caste Jat, resident of Parnala District Jhajjar,
3.Sanjay son of Jagat Singh, Caste Jat, resident of Parnala, District Jhajjar,
4.Rajiv son of Mehar Singh, Caste Jat, resident of Parnala, P.S.Linepar, Bahadurgarh

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.PS Sullar, Deputy Advocate General, Haryana.

R S MADAN,J.

We propose to dispose of this Criminal Misc. Appeal No.236-MA of 2006 filed under Section 378(3) of the Code of Criminal Procedure for leave to appeal against the order of acquittal passed by the Sub Divisional Judicial Magistrate, Bahadurgarh in a criminal case No.135 of 2003 decided on 7-11-2005.

In brief, the facts of the case are that on 11-5-2003 complainant Satish Kumar came to the police station and got a statement recorded to the effect that he had installed a tubewell near MIE Pul for water supply. Accused-Satish had also installed a tubewell there. There was some money transaction between Satish and Amit and he had stood guarantor for payment to Satish by Amit upto 10-5-2003. Amit did not make the payment. On 11-5-2003 at about 9.00 A.M. when the complainant was supplying water at his tubewell, accused Satish along with 3-4 persons came there and asked for the aforesaid money, upon which an altercation took place. Satish-accused gave a lathi blow on right arm. The other accused, who were armed with Dandas and Lathis also gave injuries to the complainant on his head, left leg and right arm. On raising alarm, Suresh, his wife and his neighbours came to his rescue. On the basis of the statement of the complainant, a case under Sections 323, 325/34 of the Indian Penal Code was registered at Police Station Linepar, Bahadurgarh.

After completion of the investigation of the case, challan against the accused was presented in the Court under Section 325/34 of the Indian Penal Code.

On appearance, the accused were charged for the commission of offence under Section 325 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

The prosecution relied upon the testimony of the following witnesses to prove its case i.e. PW1 Satish Kumar complainant, PW2 Dr.Ramji Lal, PW3 ASI Sube Singh, I.C., PW4 Dr.Anil Rathi, PW5 ASI Umed Singh and thereafter the case of the prosecution was closed.

Statements of accused under Section 313 of the Code of Criminal Procedure were recorded, wherein the entire prosecution version was put to the accused, to which they pleaded false implication.

In defence, the accused examined DW1 Sanjeet Singh.

After considering the prosecution evidence and the defence evidence, the learned Trial Judge did not find favour with the prosecution version and acquitted the accused.

We have gone through the judgment of the learned Magistrate and found that the testimony of the complainant Satish Kumar is not supported by Suresh and his wife Saroj, who had come to save the complainant from the clutches of the accused. They were given up by the prosecution having been won over. The prosecution version thus remains concentrated only on the statement of PW1-Satish Kumar. According to him, he had suffered injuries indiscriminately at the hands of the accused with Dandas and Lathis, but the medical evidence produced by the prosecution manifests that he has suffered only three injuries, which are simple in nature.

Another circumstance which the trial Court has taken into consideration is with respect to the non-naming of the other accused except Satish. PW1-Satish Kumar has categorically described the other accused, as accused and was unable to tell their names, as well as their addresses, which he had to supply to the Investigating Officer. The explanation furnished by PW1-Satish Kumar, complainant that he had learnt their names and addresses from some persons but admitted that he was unable to name anyone nor he was able to produce them in the Court to

establish the identity of the accused. Both Satish Kumar-complainant and accused are in the same business i.e. supply of water. Their tubewells are situated nearby and there appears to be a business rivalry, as is evident that Amit for whose payment complainant-Satish Kumar had stood guarantor, earlier used to take water from the tubewell of accused-Satish and now he takes water from complainant. So far as the testimony of Sanjeet Singh is concerned, he also takes water from the tubewell of Satish.

The learned Court has given the benefit of doubt to the accused on the plea that the criminal jurisprudence required that the case of the prosecution must be proved. It has to travel a long, may be true and must be true and this distance, the prosecution has to travel alone.

After considering the reasons recorded by the trial Court, we do not find any infirmity in the reasonings adopted by the trial Court in acquitting the accused.

Resultantly, leave to appeal is declined.

(K S GAREWAL)
JUDGE

(R S MADAN)
JUDGE

August 04, 2006
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